

DISCUSSION

1. Claim rejections under 35 USC § 112

Claim 12 (new claim 16): Claim 12 was rejected because there was insufficient antecedent basis for use of "the cylinder". Applicant has followed Examiner's suggestion and has replaced reference to "the cylinder" with "the longitudinal element". Detail has been added in the description of the longitudinal axis to make its definition consistent.

Claim 12 (new claim 16): There was confusion in the second paragraph regarding "both of the opposed directions" and also regarding the projection concept described. The new wording more clearly defines the projections considered as being "onto any plane having a normal perpendicular to the longitudinal axis". There are in fact an infinite number of these projections, and the wording makes clear that the projection condition stated applies to each. For each such projection, the present claim wording makes clear that the extent of the projected stop element at substantially its one end is at least 1/2 inch in each of the two radially opposed directions measured from the projected longitudinal axis. Each projection of the stop element and longitudinal axis refers to a two-dimensional plane, and there are only the two radially opposed directions that are perpendicular to the projected axis in this plane.

Claim 12 (new claim 16): A change has been made to further restrict the claim and more specifically point out its distinguishing features from the references. The T-post extender now is specifically restricted to having no more than one stop element. This is discussed further under 2. below.

Claims 12 and 14 (new claims 16 and 18): The improper parenthetical recitations have been removed from these claims.

Claim 15 (new claim 19): The phrase "prior art" has been removed per Examiner's suggestion. This claim has been reworded to more distinctly claim the subject matter that distinguishes it over the references. The claim now makes clear the effect of the wire ties which in combination with the T-post define the region alongside the upper part of the T-post where a T-post extender is to be inserted

1 thereby forming the high fence support claimed. This is discussed further under 2. below.

2 No new material has been added to the claims that is not thoroughly discussed in the
3 specification and illustrated by the figures presented with the original application. Specifically, new
4 claim 19 should be read in light of Fig. 3A and associated descriptive material in the specification.
5

6 **2. Claim rejections under 35 USC § 103**

7 Claim 12 was rejected under 35 U.S.C. 102(b) as being unpatentable over MontGuide.
8 New claim 16 contains language that more specifically distinguishes the T-post extender from
9 MontGuide. One and only one stop element attached to the longitudinal element is now specified;
10 whereas MontGuide requires two insulators. One MontGuide insulator would not provide sufficient
11 moment restraint for a reliable attachment of the extender to the T-post.

12 Each of the MontGuide insulators appears to be symmetric about a horizontal plane through the
13 center of the insulator; hence they could be applied with either end up. The largest extent of the
14 insulator in the vertical direction (MontGuide Fig. 2) appears to be in the form of a clip that fastens to the
15 T-post illustrated. The drilled out part that accepts the longitudinal element of the MontGuide extender
16 appears to occupy no more than half of the vertical extent of the insulator, and this is in the vertical
17 center of the insulator. This is clearly not at substantially one end or the other of the insulator. It is clear
18 from MontGuide Fig. 2, that at substantially either end of the insulator, none of it touches or is near the
19 T-post extender longitudinal element, but rather is used to attach to the T-post. Thus, the MontGuide
20 insulators clearly do not satisfy the restrictions of the stop element described in the new claim 16, which,
21 for each of an infinite number of projections, requires that "the stop element at substantially its end in the
22 longitudinal direction nearest the first end of the longitudinal element has a projected profile that extends
23 at least 1/2 inch in each of the two radially opposed directions measured from the projected longitudinal
24 axis". The purpose of this requirement in its intended application is to provide a well defined stop when
25 the T-post extender is inserted into position adjacent the top of a T-post (subject of new claim 19)

1 regardless of the rotational position of the T-post extender about its longitudinal axis.

2 Claims 13 and 14 (new claims 17 and 18) are rejected under 35 USC § 103(a) as being
3 unpatentable over MontGuide and further in view of SARE. SARE describes a type of movable paddock
4 post consisting of a piece of rebar, a steel washer welded on at 6 inch from one end, a PVC plastic pipe
5 (probably for decoration), another welded on steel washer (presumably as a keeper for the PVC pipe),
6 and a wire brad for holding an insulator to the post. Referencing new independent claim 16, new
7 dependent claims 17 and 18 have only one welded on washer rather than the two described by SARE.
8 Only one washer is used for the present invention, no length of PVC pipe and no wire brad.

9 Starting with the SARE paddock post, to come up with a T-post extender in view of MontGuide
10 and SARE that would function as specified by new claims 16, 17, and 18 of the present invention, one
11 would need to remove one washer, remove the PVC pipe, and remove the wire brad.

12 Examiner states "it would have been obvious to one skilled in the fence post art at the time of
13 applicant's invention to modify the arrangement of MontGuide to use a washer welded to a length of
14 rebar as a stop element as taught by SARE to reduce cost". Even if the MontGuide T-post extender with
15 insulators installed and a SARE paddock post were sitting in front of one so skilled, why would it be
16 obvious to modify the arrangement of MontGuide by welding a washer onto a rebar as taught by SARE
17 to reduce cost? Why would the expert do that? How would this modified MontGuide arrangement have
18 been used? Would it be slipped into a drilled out insulator and stopped at the MontGuide insulator by the
19 washer? Why do that if friction of the insulator is sufficient? How would the necessary two insulators
20 be used, two being required to give adequate lateral restraint? Who would be there to suggest slipping
21 the modified MontGuide arrangement into the top of a T post making use of existing wire ties. Not until
22 the present invention, was this proposed. Had it been obvious before, it would have been done. But, it
23 was not obvious, and there is nothing about the MontGuide or SARE art to suggest it. Even if the extra
24 elements as taught by SARE were removed, neither MontGuide nor SARE teaches how to fasten such a
25 modified SARE device to a T-post using existing wire ties for lateral restraint.

1 Claim 15 (new claim 19) was rejected under 35 USC § 103(a) as being unpatentable over
2 MontGuide and further in view of Talt.

3 Examiner states that "regarding claim 11 (per telecon with Applicant 3/14/06, Examiner means
4 claim15), MontGuide discloses a high fence support comprising a T-post extender in combination with a
5 steel post having substantially a T-shaped cross section, and positioned vertically relative to the T-post in
6 its downward direction by gravity and by the stop element of the T-post extender and that the T-post
7 extender is disposed adjacent the T-post at its upper end". Actually, the vertical positioning of
8 MontGuide's extender is determined by the installer both when he inserts it into the drilled out holes of
9 insulators and held there by friction (see Examiner comments Office Action of 2/28/06 first two lines of
10 page 5, and MontGuide Figure 2) and when he clips the insulators onto a steel T post. Gravity has
11 nothing to do with it other than to make the friction requirements for the attachment more severe.

12 New claim 19 which now describes more clearly the high fence support combination of the T-
13 post extender and T post as elucidated by the specification, and illustrated in Fig. 3A, distinguishes
14 Applicant's invention from either MontGuide or Talt. The position of the MontGuide T-post extender as
15 held by the MontGuide insulators is approximately adjacent the over-bar of the T in cross-sections of the
16 T post but not adjacent the stem of the T. In Applicant's invention, the claim 19 language clearly
17 describes the T-post extender as being in the interstitial spaces formed by the T-post and wire ties where
18 it is adjacent to both over-bar and stem of T shaped cross-sections of the T post. By placing the T-post
19 extender in this position relative to the T post, existing wire ties can be used to provide lateral restraint,
20 thereby obviating the need for the MontGuide type of attachment insulators or the Talt wire ties. The
21 stop element of the T-post extender provides a positive vertical positioning mechanism for the extender
22 relative to the T post.

23 Examiner argues that "it would be obvious to one of ordinary skill in the fence post art at the
24 time of applicant's invention, to modify the arrangement of MontGuide to use wire ties to secure the T-
25 post extender to the T post as taught by Talt for the purpose of ease of use and durability". While it is

1 true that Talt wires a bamboo extender to a T post, it is not clear what would be the advantage over
2 MontGuide of wiring the MontGuide extender to the T post. As previously discussed the location of the
3 MontGuide extender relative to the T post is different from the location of the Talt extender or
4 Applicant's extender. Wiring the MontGuide extender to the T post as per Talt would be awkward and
5 time consuming. Why would an expert in fence building do that? If the MontGuide method works as
6 described, why go to the additional trouble of wiring an extender to a T post. Neither Talt nor
7 MontGuide suggested dropping in any type of T-post extender alongside a T post and within existing
8 wire ties for lateral support. With Applicant's invention this process can be accomplished by walking
9 alongside the T post and dropping in Applicant's extender almost without breaking stride. No additional
10 wiring is required and no additional lateral restraint is required other than what is already there serving
11 also the function of holding fence wire to the T post. Neither the Talt wire ties nor the MontGuide
12 attachment insulators are necessary with Applicant's invention.

13 It would not be possible to drop in a Talt bamboo extender because its diameter is clearly too
14 large to fit into the interstitial spaces available between the T post and existing wire ties. If the bamboo
15 extender diameter were sized downward small enough to fit, say 1/2 inch in diameter, its bending
16 strength would not meet the 200 pound-inch requirement of new claim 16. Further, there is no stop
17 element provided with the Talt bamboo extender.

18 There are numerous applications for increasing the height of existing fence or for providing new
19 high fence for the purpose of controlling deer and other wildlife. Nothing in the references or any prior
20 art known to the Applicant competes with the present invention either in its simplicity or cost efficiency.

21 Applicant's invention has been in use successfully now for two years. Not only is the high fence
22 successful in keeping deer out, but it is easily repaired as recently seen when a large tree fell on the
23 fence. Two bent T-post extenders were easily straightened and reused and broken wires spliced.

24 The references of MontGuide, SARE and Talt are available. If the present invention were
25 obvious to those skilled in fencing art using these prior references either singly or in combination, then

1 because of its importance and economic merit, these skilled artisans would already have placed the
2 invention into service. Yet, even more than two years after filing the application, Applicant still knows
3 of no solution to the high fence problem that is as economical or efficient as the present invention.
4

5 **SUMMARY**

6 Applicant as carefully studied the reasons for claim rejections under 35 USC § 112 and has made
7 a diligent effort to reword these claims so that they are acceptable under 35 USC § 112.

8 Applicant also has carefully studied the reasons for claim rejections under 35 USC § 103 in light
9 of the references identified by Examiner. The new independent claim 16 and dependent claims 17, 18
10 and 19 have been written carefully to more clearly restrict and distinguish the subject matter over the
11 references. All detail in the claims is clearly described in the specification and figures as originally
12 submitted.

13 The claimed material is original, satisfies a long identified need (as indicated by the references
14 MontGuide and Talt) and is economically successful. None of the references either singly or in
15 combination suggest the present invention, nor, for the reasons given above, would it have been obvious
16 to a person skilled in the fence post art at the time of the invention and being fully aware of these
17 references, to pursue the approach described by Applicant.



Respectfully submitted

Friend K. Bechtel

Applicant Pro Se

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